

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

INTERIM STUDY PROPOSAL 2007-016

State of Arkansas
86th General Assembly
Regular Session, 2007

A Bill

HOUSE BILL 1006

By: Representative Key

Referred to
Public Health, Welfare And Labor Committee- House
by the House of Representatives
on 03/28/2007

For An Act To Be Entitled

AN ACT TO CREATE HEALTH OPPORTUNITY ACCOUNTS TO
PROVIDE FOR AN ALTERNATIVE DELIVERY SYSTEM FOR
MEDICAID SERVICES; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO CREATE HEALTH OPPORTUNITY
ACCOUNTS TO PROVIDE FOR AN ALTERNATIVE
DELIVERY SYSTEM FOR MEDICAID SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 20, Chapter 77 is amended to add and
additional subchapter to read as follows:

20-77-1801. Definitions.

As used in this subchapter:

(1) "Demonstration program Medicaid services" means, with respect to an individual participating in the demonstration program, services for which the individual would be provided medical assistance under the state Medicaid plan but for the application of the deductible described in § 20-77-1805(a)(1);

(2) "Health opportunity account" means an account that meets the requirements of this subchapter;



1 (3) "Maximum out-of-pocket cost sharing" means for an individual
 2 or family the amount by which the annual deductible applied under § 20-77-
 3 1805(a)(1) to the individual or family exceeds the balance in the health
 4 opportunity account for the individual or family;

5 (4) "Participating provider" means:

6 (A) With respect to an individual described in § 20-77-
 7 1805(d)(1), a health care provider that has entered into a participation
 8 agreement with the state Medicaid plan for the provision of services to
 9 individuals entitled to benefits under the state Medicaid plan; and

10 (B) With respect to an individual described in § 20-77-
 11 1805(d)(2) who is enrolled in a Medicaid managed care organization, a health
 12 care provider that has entered into an arrangement for the provision of
 13 services to enrollees of the organization under this subchapter; and

14 (5) "State Medicaid plan" means the medical assistance program
 15 under Title XIX of the Social Security Act, as it existed on January 1, 2007,
 16 that is operated by the Department of Health and Human Services, including
 17 contractors, fiscal agents, and all other designees and agents.

18
 19 20-77-1802. Health Opportunity Accounts for Medicaid recipients.

20 (a)(1) Within thirty (30) days after the effective date of this
 21 subchapter, the state Medicaid plan shall apply to the Centers for Medicare
 22 and Medicaid Services for approval of a demonstration program to create
 23 health opportunity accounts as provided in 42 U.S.C. § 1398, as it existed on
 24 January 1, 2007.

25 (2) If the Secretary of the United States Department of Health
 26 and Human Services determines that the demonstration program should be
 27 extended as a continuing program, the state Medicaid plan shall apply:

28 (A) For an extension of the existing demonstration program
 29 as a continuing Health Opportunity Accounts program; or

30 (B) If Arkansas has not been awarded a Health Opportunity
 31 Accounts demonstration program, for:

32 (i) An Arkansas Health Opportunity Accounts
 33 demonstration program; or

34 (ii) A continuing Health Opportunity Accounts
 35 program.

36 (b) At a minimum, the demonstration program shall include provisions

1 to:

2 (1) Create patient awareness of the high cost of medical care;

3 (2) Provide incentives to patients to seek preventive care

4 services;

5 (3) Reduce inappropriate use of health care services;

6 (4) Enable patients to take responsibility for health outcomes;

7 (5) Provide enrollment counselors and ongoing education

8 activities;

9 (6) Provide a means for transactions involving health

10 opportunity accounts to be conducted electronically and without cash; and

11 (7) Provide access to negotiated provider payment rates

12 consistent with this subchapter.

13 (c) This section does not prevent the inclusion in the demonstration
14 program of incentives for patients obtaining appropriate preventive care
15 under 23 U.S.C § 223(c)(2)(C), as it existed on January 1, 2007, such as
16 additional account contributions for an individual demonstrating healthy
17 disease prevention practices.

18 (d) This section does not require that the demonstration program be
19 implemented on a statewide basis.

20
21 20-77-1803. Eligibility -- Limitations.

22 (a) The demonstration program to create Health Opportunity Accounts
23 shall specify the eligible population consistent with subsections (b) and (c)
24 of this section.

25 (b) The demonstration program shall not apply to any individual who:

26 (1) Is sixty-five (65) years of age or older;

27 (2) Is disabled, regardless of whether or not his or her
28 eligibility for medical assistance under the state Medicaid plan is based on
29 the disability;

30 (3) Is eligible for Medicaid assistance only because she is or
31 was pregnant within the previous sixty (60) days; or

32 (4) Has been eligible for Medicaid assistance for a continuous
33 period of less than three (3) months.

34 (c) The demonstration program shall not apply to:

35 (1) A pregnant woman who is required to be covered under the
36 state Medicaid plan under 42 U.S.C. § 1396a(a)(10)(A)(i), as it existed on

1 January 1, 2007;

2 (2) A blind or disabled individual who qualifies for medical
 3 assistance under the state Medicaid plan on the basis of being blind or
 4 disabled or being treated as being blind or disabled without regard to
 5 whether the individual is eligible for supplemental security income benefits
 6 under 42 U.S.C. § 1351 et seq., as it existed on January 1, 2007, on the
 7 basis of being blind or disabled and including an individual who is eligible
 8 for medical assistance on the basis of state Medicaid plan;

9 (3) An individual entitled to benefits under 42 U.S.C. § 1395 et
 10 seq, as it existed on January 1, 2007;

11 (4) An individual who is terminally ill and is receiving
 12 benefits for hospice care under the state Medicaid plan;

13 (5) An individual who is an inpatient in a hospital, nursing
 14 facility, intermediate care facility for the mentally retarded, or other
 15 medical institution and is required as a condition of receiving services in
 16 the institution under the state Medicaid plan to spend for costs of medical
 17 care all but a minimal amount of the individual's income required for
 18 personal needs;

19 (6) An individual who is medically frail or an individual with
 20 special medical needs as identified in accordance with regulations of the
 21 state Medicaid plan;

22 (7) An individual who qualifies for medical assistance for long-
 23 term care services described in 42 U.S.C. § 1396p(c)(1)(C), as it existed on
 24 January 1, 2007, based on a medical condition;

25 (8) A child in foster care receiving child welfare services and
 26 a child receiving foster care or adoption assistance under 42 U.S.C. § 620 et
 27 seq., as it existed on January 1, 2007;

28 (9) An individual who qualifies for medical assistance based on
 29 eligibility to receive assistance under the state Medicaid plan funded under
 30 42 U.S.C. § 601 et seq., as it existed on January 1, 2007;

31 (10) A woman in the breast or cervical cancer program; or

32 (11) An individual who:

33 (A) Qualifies for medical assistance under 42 U.S.C. §
 34 1396a(a)(10)(A)(ii)(XII), as it existed on January 1, 2007; or

35 (B) Is not a qualified alien as defined in 8 U.S.C. §
 36 1641, as it existed on January 1, 2007, and receives care and services

1 necessary for the treatment of an emergency medical condition in accordance
 2 with 42 U.S.C. § 1396b(v), as it existed on January 1, 2007.

3 (d) The state Medicaid plan may further limit eligibility for
 4 participation in the demonstration program.

5 (e) For any individual who is enrolled in a Medicaid managed care
 6 organization, the individual may participate in the demonstration program
 7 only if the state Medicaid plan provides assurances satisfactory to the
 8 Secretary of the United States Department of Health and Human Services that
 9 the following conditions are met with respect to any Medicaid managed care
 10 organization:

11 (1) The number of individuals enrolled in the Medicaid managed
 12 care organization who participate in the demonstration program does not
 13 exceed five percent (5%) of the total number of individuals enrolled in the
 14 Medicaid managed care organization;

15 (2) The proportion of enrollees in a Medicaid managed care
 16 organization who participate in the demonstration program is not
 17 significantly disproportionate to the proportion of enrollees in other
 18 organizations who participate; and

19 (3) The state Medicaid plan has provided for an appropriate
 20 adjustment in the per capita payments to the Medicaid managed care
 21 organization to account for participation in the demonstration program taking
 22 into account differences in the likely use of health services between
 23 enrollees who participate and enrollees who do not participate.

24
 25 20-77-1804. Enrollment.

26 (a)(1) An eligible individual shall be enrolled in the Health
 27 Opportunity Accounts demonstration program only if the individual voluntarily
 28 enrolls.

29 (2)(A) Except in hardship cases specified by the Secretary of
 30 the United States Department of Health and Human Services, an enrollment
 31 shall be effective for a twelve-month period.

32 (B) However, the enrollment may be extended for additional
 33 twelve-month periods if the enrolled individual consents to each extension.

34 (b) An eligible individual who is disenrolled from the demonstration
 35 program for any reason shall not be permitted to reenroll in the program
 36 before the end of the one-year period that begins on the effective date of

1 the disenrollment.

2
 3 20-77-1805. Alternative benefits -- Deductible -- Rates --
 4 Computation.

5 (a) At a minimum, the alternative benefits provided under this
 6 subchapter shall consist of:

7 (1) Coverage for medical expenses in one (1) year for items and
 8 services for which benefits are otherwise provided under the state Medicaid
 9 plan after the annual deductible set out in subsection (c) of this section
 10 has been met; and

11 (2) Contribution into a health opportunity account.

12 (b) Subdivision (a)(1) of this section does not prevent the state
 13 Medicaid plan from providing for coverage of preventive care within the
 14 alternative benefits provided under this subchapter without regard to the
 15 annual deductible.

16 (c) The annual deductible applied under subdivision (a)(1) of this
 17 section shall be at least one hundred percent (100%) but no more than one
 18 hundred ten percent (110%) of the annualized amount of contributions to the
 19 health opportunity account under § 20-77-1806(a)(1) determined without regard
 20 to any limitation described in subdivision (a)(1) of this section.

21 (d)(1) For an individual who is participating in the Health
 22 Opportunity Accounts demonstration program and who is not enrolled with a
 23 Medicaid managed care organization, the state Medicaid plan shall provide
 24 that the individual may obtain demonstration program Medicaid services from:

25 (A) Any participating provider in the state Medicaid plan
 26 at the same payment rates that would be applicable to the services if the
 27 deductible required under subdivision (a)(1) of this section was not
 28 applicable; or

29 (B) Any other provider at payment rates that do not exceed
 30 one hundred twenty-five percent (125%) of the payment rate that would be
 31 applicable to the services furnished by a participating provider in the state
 32 Medicaid program if the deductible described in subdivision (a)(1) of this
 33 section was not applicable.

34 (2) For an individual who is participating in the demonstration
 35 program and who is enrolled with a Medicaid managed care organization, the
 36 state Medicaid program shall enter into an arrangement with the Medicaid

1 managed care organization under which the individual may obtain demonstration
 2 program Medicaid services from any provider described in subdivision
 3 (d)(1)(B) of this section at payment rates that do not exceed the payment
 4 rates that may be imposed under subdivision(d)(1)(B) of this section.

5 (e) The payment rates under subsections (a) and (d) of this section
 6 shall be computed without regard to any cost sharing that would be otherwise
 7 applicable under 42 U.S.C. § 1396o and 42 U.S.C. § 1396o-1, as they existed
 8 on January 1, 2007.

9 (f) Except as provided in subsections (a) and (d) of this section,
 10 alternative benefits for an individual eligible to participate in the
 11 demonstration program shall consist of the benefits otherwise provided to the
 12 individual, including cost sharing relating to the benefits.

13 (g)(1) The provisions of the state Medicaid plan relating to cost
 14 sharing for benefits including those arising under 42 U.S.C. § 1396o and 42
 15 U.S.C. § 1396o-1, as they existed on January 1, 2007, shall not apply with
 16 respect to benefits to which the annual deductible required under subdivision
 17 (a)(1) of this section applies.

18 (2) The provisions of the state Medicaid plan relating to 42
 19 U.S.C. § 1396a(a)(10)(B), as it existed on January 1, 2007, shall not apply
 20 with respect to the provision of alternative benefits as described in this
 21 section.

22 (h) Subject to § 20-77-1806(d), payments for alternative benefits
 23 under this section including contributions into a health opportunity account
 24 shall be treated as medical assistance for purposes of 42 U.S.C. § 1396b(a),
 25 as it existed on January 1, 2007.

26 (i) The state Medicaid plan may vary the amount of the:

27 (1) Annual deductible applied under subdivision (a)(1) of this
 28 section based on the income of the family involved so long as the variation
 29 does not favor a family with higher income over a family with lower income;
 30 and

31 (2) Maximum out-of-pocket cost sharing based on the income of
 32 the family involved so long as it does not favor a family with higher income
 33 over a family with lower income.

34 (j) This section does not prevent an employer from providing health
 35 benefits coverage consisting of the coverage described in subdivision (a)(1)
 36 of this section to an individual who is provided alternative benefits under

1 this section.

2
3 20-77-1806. Health Opportunity Accounts.

4 (a) No contribution may be made into a Health Opportunity Account
5 except for contributions by:

6 (1) The state under the state Medicaid plan; and

7 (2) Other persons and entities such as charitable organizations,
8 as permitted under 42 U.S.C. § 1396(w), as it existed on January 1, 2007.

9 (b) The state Medicaid plan shall specify the contribution amount that
10 shall be deposited into a health opportunity account under subdivision (a)(2)
11 of this section.

12 (c)(1) The state Medicaid plan:

13 (A) May impose limitations on the maximum annual
14 contributions that may be deposited into a health opportunity account under
15 subdivision (a)(2) of this section;

16 (B) May limit contributions into a health opportunity
17 account once the balance in the account reaches a level specified by the
18 state Medicaid plan; and

19 (C) Subject to subdivisions (c)(2) and (3) of this section
20 and subdivision (d)(1) of this section, may not provide contributions under
21 subdivision (a)(1) of this section into a health opportunity account on
22 behalf of an individual or family to the extent the amount of the
23 contributions including both the state and federal shares exceeds on an
24 annual basis:

25 (i) Two thousand five hundred dollars (\$2,500) for
26 each individual or family member who is an adult; and

27 (ii) One thousand dollars (\$1,000) for each
28 individual or family member who is a child.

29 (2) The dollar amounts specified in subdivision (c)(1)(C) of
30 this section shall be increased annually by a percentage that reflects the
31 annual percentage increase in the medical care component of the consumer
32 price index for all urban consumers.

33 (3) The state Medicaid plan may provide for dollar limitations
34 in excess of those specified in subdivision (c)(1)(C) of this section as
35 increased under subdivision (c)(2) of this section for specified individuals
36 if the state Medicaid plan provides assurances satisfactory to the Secretary

1 of the United States Department of Health and Human Services that
 2 contributions otherwise made to other individuals will be reduced in a manner
 3 so as to provide for aggregate contributions that do not exceed the aggregate
 4 contributions that would otherwise be permitted under this section.

5 (d)(1) The state Medicaid plan may contribute amounts under
 6 subdivision (a)(2) of this section into a health opportunity account in
 7 excess of the limitations provided under subdivision (c)(1)(C) of this
 8 section, but no federal financial participation shall be provided under 42
 9 U.S.C. § 1396b(a), as it existed on January 1, 2007, with respect to
 10 contributions in excess of those limitations.

11 (2) Unless the Secretary of the United States Department of
 12 Health and Human Services creates an exception, no federal financial
 13 participation shall be provided under 42 U.S.C. § 1396b(a), as it existed on
 14 January 1, 2007, with respect to any contributions into a health opportunity
 15 account under subdivision (a)(2) of this section.

16
 17 20-77-1807. Use of moneys in a health opportunity account.

18 (a)(1) Except as otherwise provided in this section, amounts in a
 19 health opportunity account may be used for payment of any health care
 20 expenditures that the state Medicaid plan specifies.

21 (2) Subject to § 20-77-1808(b)(2), a health opportunity account
 22 may not be used for payment for health care expenditures that are not payment
 23 of medical care as defined in 23 U.S.C § 213(d), as it existed on January 1,
 24 2007.

25 (3) In applying subdivision (a)(1) of this section, the state
 26 Medicaid plan may:

27 (A) Restrict payment for a provider of an item or service:

28 (i) To a provider that is licensed or otherwise
 29 authorized under Arkansas law to provide the item or service; and

30 (ii) Insofar as the state finds that the item or
 31 service is not medically appropriate or necessary; and

32 (B) Deny payment for a provider that is licensed or
 33 otherwise authorized under Arkansas law if the provider has been found with
 34 respect to the state Medicaid plan or any other health benefit program to
 35 have failed to meet quality standards or to have committed one (1) or more
 36 acts of fraud or abuse.

1 (b)(1) The demonstration program shall provide for a method whereby an
 2 electronic system may be used to make withdrawals from the health opportunity
 3 account for purposes described in subsection (a) of this section.

4 (2) The state Medicaid plan shall prohibit cash withdrawals from
 5 the health opportunity account.

6
 7 20-77-1808. Maintenance of health opportunity account after an account
 8 holder becomes ineligible for Medicaid.

9 (a) If a health opportunity account holder of a health opportunity
 10 account becomes ineligible for benefits under the state Medicaid plan because
 11 of an increase in income or assets:

12 (1) No additional contribution shall be made into the health
 13 opportunity account under § 20-77-1806(a)(1);

14 (2) Subject to subsection (c) of this section, the balance in
 15 the health opportunity account shall be reduced by twenty-five percent (25%);
 16 and

17 (3)(A) Except as otherwise provided in this section, the health
 18 opportunity account shall remain available to the health opportunity account
 19 holder for three (3) years after the date on which the individual becomes
 20 ineligible for Medicaid benefits for withdrawals under the same terms and
 21 conditions as if the health opportunity account holder remained eligible for
 22 Medicaid benefits; and

23 (B) The withdrawals shall be treated as medical assistance
 24 in accordance with § 20-77-1805(h).

25 (b) Withdrawals from a health opportunity account under this section:

26 (1) Shall be available for the purchase of health insurance
 27 coverage; and

28 (2) Subject to subsection (d) of this section, may be made
 29 available at the option of the state Medicaid plan for additional
 30 expenditures such as job training and tuition expenses specified by the state
 31 Medicaid plan and approved by the Secretary of the United States Department
 32 of Health and Human Services.

33 (c)(1) Subdivision (a)(2) of this section does not apply to the
 34 portion of the health opportunity account that is attributable to
 35 contributions under § 20-77-1806(a)(2).

36 (2) For purposes of accounting under this section for

1 contributions under § 20-77-1806(a)(2), withdrawals from a health opportunity
 2 account shall first be attributed to contributions described in § 20-77-
 3 1806(a)(1).

4 (d) No withdrawal may be made from a health opportunity account under
 5 subdivision (b)(2) of this section unless the health opportunity account
 6 holder has participated in the Health Opportunity Account demonstration
 7 program created in this subchapter for at least one (1) year.

8 (e) After becoming ineligible for medical assistance under the state
 9 Medicaid plan, no health opportunity account holder is required to purchase
 10 high-deductible or other insurance as a condition of maintaining or using the
 11 health opportunity account.

12
 13 20-77-1809. Administration.

14 The state Medicaid plan may coordinate administration of health
 15 opportunity accounts through the use of a third-party administrator and
 16 reasonable expenditures for the use of the third-party administrator shall be
 17 reimbursable to the state Medicaid plan in the same manner as other
 18 administrative expenditures under 42 U.S.C. § 1396b(a)(7), as it existed on
 19 January 1, 2007.

20
 21 20-77-1810. Treatment.

22 Amounts in or contributed into a health opportunity account shall not
 23 be counted as income or assets for purposes of determining eligibility for
 24 benefits under the state Medicaid plan.

25
 26 20-77-1811. Unauthorized withdrawals.

27 The state Medicaid plan may establish procedures to:

28 (1) Penalize or remove an individual from the Health Opportunity
 29 Account based on nonqualified withdrawals by the individual from the health
 30 opportunity account; and

31 (2) Recoup costs that derive from the nonqualified withdrawals.
 32

33 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
 34 General Assembly of the State of Arkansas that the federal Health Opportunity
 35 Account program offers states new flexibility for Medicaid services; that the
 36 new flexibility promises substantial, long-term savings to Arkansas; and that

1 only ten (10) states will be selected to participate in the initial Health
2 Opportunity Account demonstration program; and that this act is necessary
3 because the initial demonstration program is authorized to begin January 1,
4 2007. Therefore, an emergency is declared to exist and this act being
5 necessary for the preservation of the public peace, health, and safety shall
6 become effective on:

- 7 (1) The date of its approval by the Governor;
- 8 (2) If the bill is neither approved nor vetoed by the Governor,
9 the expiration of the period of time during which the Governor may veto the
10 bill; or
- 11 (3) If the bill is vetoed by the Governor and the veto is
12 overridden, the date the last house overrides the veto.

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